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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAWAII CHILDREN'S BLOOD AND)	
CANCER GROUP,)	CV 03-00708 SOM-LEK
)	Honolulu, Hawaii
Plaintiff,)	January 19, 2006
vs.)	2:15 P.M.
)	
HAWAII PACIFIC HEALTH, et al.,)	Various Motions
)	
Defendants.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	RAFAEL G. DEL CASTILLO ARLEEN D. JOUXSON-MEYERS Jouxson-Meyers & del Castillo 302 California Ave., Ste. 209 Honolulu, HI 96786
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Official Court Reporter:	Debra Kekuna Chun, RPR, CRR United States District Court 300 Ala Moana Blvd. Ste. C285 Honolulu, HI 96850 (808) 534-0667

Proceedings recorded by machine shorthand, transcript
produced with computer-aided transcription (CAT).

1 THURSDAY, JANUARY 19, 2006 2:19 O'CLOCK P.M.

2 THE CLERK: Civil 03-708 SOM-LEK, Hawai'i
3 Children's Blood and Cancer Group versus Hawai'i Pacific
4 Health, et al. This case has been called for a Motion to
5 Strike or Dismiss Defendant's Renewed Motion to Dismiss,
6 et cetera, and a Motion to Modify Amended Rule 16
7 Scheduling Order.

8 Counsel, please make your appearances for the
9 record.

10 MR. DEL CASTILLO: Good afternoon, Your Honor.
11 Rafael Del Castillo on behalf of Hawai'i Children's Blood
12 and Cancer Group. To my right is my law partner Arleen
13 Jouxson-Meyers. Also in court today we have our legal
14 assistant in training Chris Osaki.

15 THE COURT: Okay.

16 MR. ROBBINS: Good afternoon, Your Honor.
17 Kenneth Robbins and Leighton Hara, my associate, on behalf
18 of all defendants. Since we're mentioning folks behind
19 the bar our marvelous legal secretary.

20 THE COURT: Order a transcript.

21 MR. ROBBINS: I couldn't agree more. I'll order
22 it right now. Anyway, Sandy Yasushima, who worked so hard
23 with Leighton yesterday to meet this morning's nine
24 o'clock deadline, to whom I'm extremely grateful.

25 THE COURT: I wouldn't want anybody to be left

1 out, but, fortunately, I only have two people sitting in
2 the gallery; so I guess that's it. You can all be seat.
3 Thank you.

4 MR. ROBBINS: Thank you, Your Honor.

5 MR. DEL CASTILLO: Thank you, Your Honor.

6 THE COURT: Now, what happened was I had to go
7 back and pull out the files and try to figure out what
8 happened here. But one of the things that happened isn't
9 in any of the papers, and I just wanted to remind you
10 folks about this.

11 Okay. So you all remember that in October 2004
12 I relied on the Colorado River case, and I stayed the
13 proceedings here. And then, you know, nine months later
14 or something like that I issued an order asking for
15 correspondence from the parties, updating me on the status
16 of the state case. And back came correspondence from the
17 attorneys, informing me that in the state court the trial
18 of the companion case was scheduled for October 2005.

19 Relying on the October 2005 state court trial
20 date I set a trial date for this federal case for May of
21 2006, thinking that waiting eight months after the
22 scheduled state court trial date would avoid your having
23 parallel deadlines, would avoid duplicative litigation,
24 if, in fact, everything was resolved in the state court
25 case, and would be consistent with the earlier stay I had

1 entered of this action.

2 I put in those deadlines with the May 2006 trial
3 date here in this court so that we wouldn't forget about
4 this case and lose track of it and something would be on
5 the calendar, but I put it what I thought was sufficiently
6 beyond the state court trial date to avoid a conflict.

7 And then, of course, I guess, the state court trial date
8 got moved. But nobody told me about that, and now we have
9 all these things happening.

10 Okay. Well, I think the first thing that I
11 ought to do is handle the motion to extend or to modify
12 the Rule 16 because that may well determine whether the
13 motion to dismiss or extend the stay is stricken or not.
14 So they filed a motion to modify the Rule 16 order, and do
15 plaintiff's want to say anything about that? I do have
16 your response on the motion to strike, which probably has
17 most of what you want to say here.

18 MR. DEL CASTILLO: Your Honor, our reply does,
19 essentially, advance our position on that. And I'm
20 prepared to discuss it, if you wish, if you would like me
21 to go over the points, but I think that it does address
22 their motion to amend as far as the substance and as far
23 as the reasons on which an order might be based.

24 THE COURT: Okay. Well, I'll say this: I think
25 that the standard that I use on their motion to modify the

1 Rule 16 scheduling order is Rule 16's standard and not the
2 excusable neglect standard that is cited in defendant's
3 papers. I think the Ninth Circuit case law makes it clear
4 that I look at Rule 16, which requires good cause, not at
5 Rule 6 on excusable neglect, in deciding whether to modify
6 a Rule 16 order.

7 And I actually don't think that there's good
8 cause to extend the Rule 16 dispositive motion. I mean,
9 you know, good cause may exist, given how the schedules
10 worked out here, but I don't think it's stated in the
11 motion. But that still only goes to the dispositive
12 portion of the motion, not to the motion to stay.

13 But let me put aside the motions for a minute.
14 I mean, do plaintiff's really want this case to continue,
15 and, if so -- this federal case, and, if so, why? I mean
16 it does sound to me as if there are no claims that you
17 would need to come back to me for on. And, if I'm right,
18 why do you even want this with the headache of me, you
19 know, putting things on the calendar so we don't forget
20 this case; although, my intent had been to put them on the
21 calendar sufficiently beyond the state court trial date so
22 as not to run into conflicts. Do you really want this
23 case around now?

24 MR. DEL CASTILLO: We didn't think -- we do,
25 Your Honor. And we didn't think that it ill-suited us to

1 have the state case go after the federal case. The
2 federal case begins in January 2002. The state case
3 essentially ends in 2002 at the time the federal case
4 begins, when the parties become competitors instead of
5 employer/employee. And to a certain extent keeping the
6 cases -- to a great extent keeping the cases together we
7 expect is going to be confusing and require a much
8 lengthier trial if they're all tried in the same court.

9 You also have the factor of two defendants that
10 are not related to the federal case, Deloitte & Touche and
11 Dennis Warren, who would be required to sit through a
12 lengthy proceeding like that. And the only way to avoid
13 that would be for Judge Ayabe to bifurcate the case, which
14 I believe he's indicated he's not willing to do, as did
15 Judge Del Rosario before him.

16 THE COURT: Wait, now. Let me -- I'm not
17 certain I'm following you so far. You want my trial to go
18 to trial in May before the state court case; is that what
19 you're saying?

20 MR. DEL CASTILLO: That suits us, Your Honor.

21 THE COURT: Well, that's inconsistent with the
22 intent that I expressed earlier, and I don't know that --
23 I mean, nothing's really happened substantively in my
24 case, and so I don't see why I should change my mind that
25 now my case should go before the state court case when

1 over a year ago I said, "Look, the state court case is
2 father along than mine; the state court case should go
3 first." I don't know what should change my mind on the
4 trial, which is a separate issue from whether the motions
5 cutoff and everything else should be changed, which I know
6 is the subject immediately before me.

7 But I don't understand why I should let my trial
8 go before the state court trial. I mean, I would have to
9 think I was wrong in October 2004. And you know what,
10 sometimes I'll admit I was wrong, but I just don't see
11 that I was wrong. What makes that wrong what I did in
12 October 2004?

13 MR. DEL CASTILLO: Well, Your Honor, the parties
14 have -- the parties agreed a long time ago that the
15 depositions in discovery in the state case and the federal
16 case would be combined because we had witnesses coming
17 from out of state; that we'd be able to take the
18 deposition testimony for the federal case at the same time
19 as the state case.

20 We have taken the deposition testimony of a
21 number of 30(b)(6) witnesses, which primarily concern the
22 federal case, and we have taken the deposition of a number
23 of percipient witnesses, who have testimony to offer both
24 in the federal and the state case. So we've been moving
25 both cases along at the same time. As for -- as we would

1 have to if they were combined in the state court anyway,
2 taking the evidence that we need to for both cases.

3 The difference --

4 THE COURT: Okay. Well, I'm going to tell you
5 right now I'm not at all inclined to put this federal
6 court case ahead of the state court trial. I'm in no way
7 inclined to do that. And I still don't understand why you
8 need to have this case still around now.

9 MR. DEL CASTILLO: The federal case you mean?
10 Well, we need the federal case -- we filed the federal
11 case because it's an antitrust case and because we
12 believed that it was a very separate case from the state
13 case because Hawai'i Children's Blood and Cancer Group is
14 a competitor to defendants, and it was to our mind
15 confusing and difficult to understand the whole enterprise
16 and interaction as a continuum.

17 We felt the best thing to do would be to file in
18 federal court. We were also having a great deal of
19 difficulty in state court, to be quite frank, because
20 Judge Del Rosario told us he did not want the case to come
21 to trial. And the reason he gave us for not wanting the
22 case to come to trial was because he felt that the gallery
23 would be filled with malpractice attorneys, and they'd all
24 be there listening for possible cases to bring against the
25 hospital and the physicians in the future. And so he, as

1 you know, or may recall, forced us into mediation at
2 several points in the case.

3 Enough time has gone by and enough water has
4 gone over the bridge that Judge Ayabe in the state court,
5 who has the case now, is not similarly persuaded and has
6 actually triple set this case for June 5th in 2006.

7 As for -- and I don't want to be misunderstood
8 here. As for whether or not this case should go before
9 the state case, what I meant to say, Your Honor, is that
10 it suits us to do so, but that is because we're mindful of
11 the need on your calendar to move cases along. If it is
12 the court's disposition to continue this case until after
13 the state case is fully adjudicated, as you indicated
14 previously that was your intent, then we're not taking the
15 position that this case should go first before the state
16 case. To us they are separate cases, separate issues,
17 separate parties, and they need to be heard by a separate
18 court.

19 THE COURT: Okay. Well, it kind of sounds to me
20 as if what you're offering is this: That from your point
21 of view it's fine for me to refuse to modify the
22 Rule 16 -- I don't know that that makes any sense, but
23 even if it does -- but to grant the motion to stay, which
24 is not a dispositive motion that was subject to the
25 dispositive motion cutoff and then, even though it's not

1 on my calendar today, to go ahead and stay the case beyond
2 the state court trial date.

3 MR. DEL CASTILLO: If that's our choice, Your
4 Honor.

5 THE COURT: Well, no, I mean you can fight it
6 out. You'll have to come back for another hearing and so
7 forth on the, you know, at least a motion to stay, but I
8 don't know you want to do that.

9 MR. DEL CASTILLO: Well, we're not inclined to
10 dismiss this case. If the choice is to continue it beyond
11 the state court case until it's finally adjudicated, we'll
12 take item B.

13 THE COURT: Okay. Mr. Robbins.

14 MR. ROBBINS: So will we, Your Honor.

15 THE COURT: Whatever that means. What are we
16 going to do about dispositive motions? There will be
17 none, then; is that what you're --

18 MR. ROBBINS: Well, Your Honor, if --

19 THE COURT: See, this motion that you filed to
20 dismiss, I mean, even though in your motion to amend the
21 Rule 16 you say, well, there are expert reports and, you
22 know, we agreed to extend those deadlines; so, of course,
23 why should we have to file dispositive motions. Okay.
24 That kind of makes sense that you don't have to file a
25 dispositive motion based on an expert report filed after

1 the dispositive motion cutoff, but your motion to dismiss
2 isn't based on any expert. It's just based on the
3 existing state court case.

4 MR. ROBBINS: Exactly.

5 THE COURT: And that has nothing to do with
6 whatever expert reports there may be or not be in terms of
7 your just wanting not to have to have this case around or
8 going anyway while you're waiting for the state court
9 trial. So, you know, I'm kind of inclined to say, no, I'm
10 not going to modify the Rule 16 on the record in front of
11 me, but that doesn't affect whether the stay should be
12 extended. I'm kind of inclined to say I'll strike the
13 motion to dismiss portion of the pending motion but not
14 the motion to stay portion, even though the motion to
15 dismiss or motion to stay is really not on my calendar.
16 If you guys don't mind, I'm just going to go ahead and
17 stay the case until after the state court trial.

18 And then, if there are dispositive motions that
19 someone wants to bring, then they have to move again to
20 amend the Rule 16, and at that time we'll see whether
21 there's good cause to move the Rule 16 for some motion to
22 dismiss other than the one that's in front of me now,
23 which, you know, is based on an existing state court trial
24 date, which, although it wasn't known to me to be in June
25 2006, seems to have been known to the parties; so that

1 could have been taken care of earlier.

2 So that's what I'm thinking I should do. I
3 mean, otherwise, you folks can just withdraw all these
4 motions, and I'll just extend the stay. I mean, that's
5 another way to do.

6 MR. ROBBINS: Well, Your Honor, I think Your
7 Honor is making a great deal of sense. And, if I may be
8 very candid with the court, frankly, I didn't expect you
9 to dismiss the federal court case. I expected you, based
10 on the rationale that you expressed on the record and in
11 your written order, to either stay the case or continue
12 the trial. And I thought it was more likely -- excuse me.

13 THE COURT: Well, the only reason that you got
14 this weird thing was because I'm the one who set the trial
15 date and I was doing so -- setting it in May 2006 with the
16 now outdated information that your trial was to be in
17 October 2005. I had no intention of kind of nullifying my
18 earlier stay by setting the trial in this case ahead of
19 the trial in the state court case; so it was, you know,
20 ignorance of the new trial date on my part that now puts
21 us all in this -- the present situation. But I had no
22 intent of, you know, in effect, nullifying my earlier
23 order, and that's why I set it for May 2006 --

24 MR. ROBBINS: Right.

25 THE COURT: -- thinking that was so far away

1 from your October 2005 date that I was not in danger of
2 nullifying my earlier stay order.

3 MR. ROBBINS: Your Honor, we should have done --

4 MR. DEL CASTILLO: We certainly apologize.

5 MR. ROBBINS: -- we should have come to Judge
6 Kobayashi at the time the state court case was put over
7 from October of last year to May 23d of this year, and we
8 should have advised Judge Kobayashi in the spirit of
9 collegiality and candor with this court and had suggested
10 to her or asked her if that fact, moving of that trial,
11 would have any impact upon the lifting of the stay and the
12 setting of the trial date in this case.

13 THE COURT: She would have sent you to me
14 because she knew that I had put out an order saying the
15 trial date could only be moved by me. That's not because
16 I didn't think she was perfectly capable of doing it.
17 Certainly, she's more than capable of doing that. It's
18 just that, when a case is several years old, it's just
19 right on the front of my radar screen, and I'm monitoring
20 it all the time. And yours is one of those; so I just,
21 you know, kind of grab control of the old cases when I'm
22 worried about them. But I had no intent to make a nullity
23 out of my earlier stay order, and so it was the
24 continuance of the state court trial beyond my assigned
25 date that now puts us in this bizarre situation.

1 So what do you folks want to do? You want to
2 withdraw these motions? One is the motion to modify. One
3 is the motion to strike. If you both withdraw those,
4 that's great.

5 MR. ROBBINS: What we will do, Your Honor, if
6 Your Honor is going to at this juncture with Mr. Del
7 Castillo's concurrence, as he's already indicated, if
8 you're going to reimpose the stay, pending the outcome of
9 the state court case, I would then withdraw our motion to
10 extend the dispositive motions cutoff pending the outcome
11 of the state court case, and I think that we --

12 THE COURT: Without prejudice to your filing a
13 new one later.

14 MR. ROBBINS: Yes, Your Honor. That's what I
15 intend. Thank you.

16 THE COURT: And then you can withdraw your
17 motion to strike.

18 MR. DEL CASTILLO: There won't be a motion to
19 strike if he withdraws; so I will withdraw.

20 THE COURT: Well, he's actually withdrawing his
21 amendment of the Rule 16, and in doing that you're also
22 withdrawing the motion to dismiss and to stay.

23 MR. ROBBINS: Yes.

24 THE COURT: But I'm going to talk about a stay
25 in any event.

1 MR. ROBBINS: Yes. We will withdraw that
2 portion of our motion to dismiss the case, but we would
3 keep on the record the motion to stay and to continue
4 trial.

5 THE COURT: Maybe you can withdraw the motion to
6 stay if I just go ahead and order a stay and we work out
7 the dates.

8 MR. ROBBINS: If you do that, Your Honor, I
9 would do so.

10 THE COURT: Then I'll put the cart before the
11 horse here. Okay. So my thought is -- what are the
12 chances you're going to trial in June?

13 MR. ROBBINS: Mr. Del Castillo said that -- and
14 this was news to me -- that we were triple set in the
15 state court case. That is not true. We have -- we are
16 the only setting in Judge Ayabe's court on May 23d.

17 MR. DEL CASTILLO: June 5th.

18 MR. ROBBINS: I'm sorry. June 6th. June 6th.
19 I'm sorry. May 23d is this case.

20 THE COURT: That's my date.

21 MR. DEL CASTILLO: I said June 5th.

22 MR. ROBBINS: June 5th. We're both wrong.

23 MR. DEL CASTILLO: I said June 5th.

24 MR. ROBBINS: In any event Judge Ayabe has told
25 us that we are the only case set; that our case -- even if

1 another case is to be set during that time, we will take
2 priority. Therefore, it appears, Your Honor, that, if
3 mediation efforts with David Fairbanks -- and that's set
4 to begin in the state court case on February 7th. He's
5 serving as our mediator. If those efforts do not prove
6 fruitful, Judge, I asked Judge Ayabe if I could represent
7 to you the fact that we are as firm set in state court as
8 we can possibly be. He said in front of all counsel,
9 including plaintiff's counsel, I may make that
10 representation to you.

11 THE COURT: Okay. Because my proposal is to
12 continue the trial in this case. I'll do it till October.

13 MR. DEL CASTILLO: October of 2006.

14 THE COURT: Yes.

15 MR. DEL CASTILLO: Very good, Your Honor.

16 MR. ROBBINS: Thank you, Your Honor.

17 THE COURT: Is that agreeable?

18 MR. ROBBINS: Thank you. That's fine.

19 THE COURT: So that's what I'm going to do. I'm
20 going to continue the stay until October -- I'll set a
21 trial date. Okay. On October 3d. And that would mean
22 that sometime in September certain deadlines would kick
23 in. But that's still three months beyond your state court
24 trial date, and the case will be stayed until those
25 deadlines kick in.

1 MR. ROBBINS: I should think plaintiff's will
2 have concluded putting their case on by then, Your Honor.

3 THE COURT: I would think so, too. And maybe
4 even your defense case might be at least almost done,
5 wouldn't you think?

6 MR. DEL CASTILLO: If I may, Your Honor, we are
7 facing because we've stipulated to expert deadlines in
8 anticipation of a May trial date we've set deadlines for
9 our experts to produce their reports. We've yet to
10 complete the depositions that we promised them, and it's
11 unlikely that we will.

12 THE COURT: Don't you need those for your state
13 court case anyway?

14 MR. DEL CASTILLO: I beg your pardon?

15 THE COURT: Aren't you going to need experts for
16 your state court case anyway? So I'll just leave you to
17 your state court deadlines and remove the federal court
18 deadlines.

19 MR. DEL CASTILLO: That's fine.

20 THE COURT: Okay. So this is what I'm going to
21 do. The trial, which is now set for May, is moved to
22 October 3d, which is a Tuesday, 2006, nine o'clock, for
23 jury selection. So Tuesday, October 3d, 2006, is the new
24 trial date.

25 And now what happens, Toni? I have to give them

1 a pretrial statement due date?

2 THE CLERK: I'll generate the macro.

3 THE COURT: Okay. She's going to mail you stuff
4 with all these new deadlines for pretrial statement, jury
5 instructions, and all that. But -- okay. Now, hold on.

6 I'm going to instruct the courtroom manager to
7 give you deadlines from -- starting with the pretrial
8 statement and going from there to trial. The dispositive
9 motions cutoff is deemed to have passed but subject to
10 reopening upon a motion to modify, based on events that
11 may occur from today on. Okay.

12 And with respect to any discovery cutoff,
13 whatever the state court discovery cutoff is, which
14 presumably is before June 5th, that's your cutoff in this
15 case, since you folks are doing sort of concurrent
16 discovery.

17 MR. DEL CASTILLO: Very good.

18 THE COURT: Okay? I think that will work. In
19 the meantime everything else is stayed until the final
20 pretrial statement is due or until the parties get a
21 modification of the Rule 16 order.

22 Now, if, in fact, this case is going to go to
23 trial -- see, I mean, I think we're all thinking maybe
24 either you'll settle it, or you'll determine that after
25 the state court case is resolved by trial that maybe you

1 aren't going to go to trial here. But, if, in fact, you
2 are going to go to trial in October, then I urge you to
3 take action promptly so that you can get a hearing on
4 dispositive motions before October 3d, which would make
5 sense if you were going to kick out any claims.

6 So maybe I better put this into the order.

7 Okay. Any motion to modify any Rule 16 deadline
8 is due by July 10. Let's do that.

9 MR. ROBBINS: Your Honor, if I may -- and maybe
10 this is out of a sense of paranoia. If it is, please
11 excuse me. And that is, if we're to move to modify the
12 dispositive motions deadline only on the basis of expert
13 testimony, that may -- you're shaking your head no.

14 THE COURT: It wouldn't have to be only that. I
15 mean, you may have other things that occur. I mean,
16 things might happen at trial, too, I suppose.

17 MR. ROBBINS: Right. What I'm thinking is, if
18 we try the other case and it resolves all the issues in
19 this case, yet plaintiffs do not dismiss this case, I may
20 have to bring a dispositive motion, saying, "Your Honor,
21 we've already disposed of all this."

22 THE COURT: That's correct. I wasn't intending
23 only the experts but anything that occurs between now and
24 some future date because, yes, you might have a res
25 judicata motion based on the state court judgment if -- or

1 he may. Whatever it is. And so is July 10 enough? How
2 long is your trial in state court going to last, if it
3 goes?

4 MR. DEL CASTILLO: We've booked it for three
5 weeks, Your Honor.

6 MR. ROBBINS: I think it will probably be longer
7 than that. I think three weeks, considering all the
8 claims that are there, I think -- I'll be delighted if it
9 ends in three weeks, but I have a hunch it's not going to.

10 THE COURT: I'll give you July 17. I'll change
11 July 10 to July 17, then. Let me make sure my courtroom
12 manager --

13 MR. DEL CASTILLO: I was going to finish up by
14 saying that Judge Ayabe scheduled that case with the
15 knowledge, which you didn't have, of the May 23d date in
16 this case and anticipating that the antitrust claims would
17 be adjudicated by the time the state court case went to
18 trial.

19 THE COURT: By the time -- he thought I would
20 have done the trial before he did his trial?

21 MR. DEL CASTILLO: Well, that was the
22 information Judge Ayabe had because he had benefit of your
23 July 19th order when he continued the trial in the state
24 case.

25 THE COURT: Right. But my July 19 order was

1 based on information I had that the trial of the state
2 court case would be in October. See, what happened --

3 MR. DEL CASTILLO: So we now understand.

4 THE COURT: What happened was I issued an order
5 on -- sometime in July of 2005, which was, you know, nine
6 months or something after my order staying this case.

7 MR. DEL CASTILLO: July 19th.

8 THE COURT: Well, first on July 8, 2005, I
9 issued an order regarding report on related state court
10 case. And in that order of July 8 I ordered each party to
11 submit by July 15, 2005, a letter to me reporting on the
12 status of the related state court action and on the
13 anticipated schedule for my case. I then got
14 correspondence from the parties.

15 Immediately upon getting the report of the
16 parties in correspondence, that report telling me that the
17 state court case was set for trial in October of 2005, I
18 issued an order with new dates. So, you know, something
19 like a day passed or two days passed between when you told
20 me you had a state court trial in October 2005 and my
21 issuance of a date -- an order that set a new trial date
22 in my case of May 23, 2006.

23 MR. DEL CASTILLO: Yes, Your Honor.

24 THE COURT: I never got information after that
25 telling me that the state court case was not occurring in

1 October 2005 and instead had been scheduled for after my
2 May 23d, 2006 date. So that is why we are now in this odd
3 situation. But it was never my intent in setting the
4 May 23, 2006 date that I precede the state court case
5 because it was not my intent to nullify my earlier order,
6 which stayed the federal court case pending resolution of
7 the state court proceeding.

8 So, as I say, it was ignorance of the change in
9 the trial date on my part that is creating this problem.
10 It was not a rethinking of the stay or a desire, you know,
11 to jump ahead of the state court that caused me to set
12 that May 23, 2006 date.

13 So if the state court judge is thinking that the
14 federal court now wants first dibs on your dispute, that's
15 a mistake. Okay. I don't. I'm still with myself on the
16 October 2004 stay; and so --

17 MR. DEL CASTILLO: We'll deal with it
18 accordingly, Your Honor.

19 THE COURT: Okay. So wait a minute, now. So
20 this is what the courtroom manager has to do because I
21 know I've just kind of, like, given her a royal migraine
22 with what I'm doing.

23 Okay. So the motion to modify the Rule 16 order
24 is withdrawn. The motion to strike the motion to dismiss
25 or stay the case is withdrawn. The motion to dismiss or

1 stay the case is withdrawn. Nevertheless, the stay is
2 extended, and the new trial date is October 3 at nine
3 o'clock. There will be a new order that you'll get in the
4 mail with the deadlines that begin about a month before
5 the trial date with when your final pretrial statement is
6 due and then, you know, all the many things between your
7 final pretrial statement and the trial date.

8 Other than that, the dispositive motions cutoff
9 has passed but is subject to being reopened upon a new
10 motion to modify the dispositive motions cutoff, but it
11 must be based on occurrences between today and the date of
12 filing of that new motion to modify. Those are not
13 limited to expert witness issues. Anything that happens
14 between now and when you seek to reopen the dispositive
15 motions cutoff can be the basis of such a motion to
16 modify.

17 The discovery cutoff in this case is congruent
18 with the discovery cutoff in your state case sometime
19 before June 5th.

20 Does all of that make -- I'm asking really my
21 courtroom manager if she can tell me that she's -- I'm
22 going to get a royal tongue lashing.

23 MR. ROBBINS: That all makes sense, Your Honor.
24 Not the royal tongue lashing, but everything you said
25 before that makes sense.

1 THE COURT: I'll get that anyway.

2 MR. ROBBINS: Also for the record Judge Ayabe
3 has set aside six weeks for this trial. 24 trial days and
4 four trial days per week, that's equates to six weeks.

5 Also, Your Honor, we have a settlement
6 conference scheduled with Judge Kobayashi, and I trust
7 that your staff will advise her that that is off.

8 THE COURT: Yes. Everything else is vacated.
9 All the other dates are vacated, including your settlement
10 conference with Judge Kobayashi. She won't be upset with
11 me about that.

12 And then, if it's six weeks, actually my July 17
13 date for seeking to modify the Rule 16 order is six weeks.
14 Should I give you an extra week, then, after that?

15 MR. ROBBINS: Yes, please, Your Honor. I think
16 we'd appreciate that.

17 THE COURT: That will be seven weeks from when
18 you're supposed -- okay. So the July 17 deadline for
19 moving to -- at least filing your motion to modify the
20 Rule 16 dispositive motions cutoff is changed to July 24.
21 That will be eight weeks from when your trial in state
22 court is scheduled to begin.

23 Most of the things that are likely to generate a
24 motion -- a dispositive motion in my case will probably
25 have occurred even before your trial in state court

1 begins, except for a res judicata motion. But a res
2 judicata motion is not a big deal, and you can spit that
3 out in a matter of a day. I'm certain you're going to
4 have a verdict form, and there's not a whole lot more
5 you're going to need. So I suspect that would not be a
6 problem for you folks.

7 Okay. So I think we've accomplished the goal
8 that we need here, which is that I want the state court
9 case to be resolved first, but at the same I don't want
10 this case to fall between the cracks on my calendar; so
11 I've set some things on my calendar, but my intent in
12 setting them is that they be set far enough into the
13 future so as not to interfere with the state court case
14 being resolved before I have to take action in this case.
15 Okay.

16 Anybody need me to take care of anything else?

17 MR. DEL CASTILLO: Your Honor, with the court's
18 permission, if it should befall us that the state case is
19 continued for some reason because, as I told, Your Honor,
20 Judge Ayabe has told us he does triple set. That is
21 correct. And we may currently have priority, but, if
22 there's a case, for example, on which the insurance is
23 running out or some other factor or perhaps a witness may
24 not be available, then Judge Ayabe is going to bump us.
25 If that occurs --

1 THE COURT: I bet he won't bump you if a witness
2 is not available. I bet he won't bump for that.

3 MR. DEL CASTILLO: If it should come to befall
4 us that the state court case is continued or any other
5 impact the case might have on the October 3d date, with
6 the court's permission the parties will write the court a
7 letter and advise you of that.

8 THE COURT: Yes. Can you please write me a
9 letter because I don't want to have another one of
10 these --

11 MR. DEL CASTILLO: Right.

12 THE COURT: -- round robins with you folks. And
13 really my intent is to let the state court case be
14 resolved, and, yet, at the same time not to lose track of
15 this case on my calendar; so having something on the
16 calendar is just a great way not to let it fall through.
17 But I did not intend in setting my May 23 date to create
18 the impression in anybody's mind that I was somehow
19 rethinking my earlier stay and somehow now desirous of
20 jumping ahead of the state court. I still haven't gotten
21 to that point.

22 But thank you all very much.

23 MR. DEL CASTILLO: Thank you, Your Honor.

24 THE COURT: You've cleared my calendar of all
25 kinds of things for now. And I may see you in October,

1 but, you know, it would be really good if I saw you folks
2 in a different case and this case went away, but that's
3 not within my control at the moment. Thank you very much.

4 MR. ROBBINS: Thank you very much, Your Honor.

5 (Court recessed at 2:55 P.M.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Debra Kekuna Chun, Official Court Reporter,
3 United States District Court, District of Hawaii, do
4 hereby certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled
6 matter.

7 DATED at Honolulu, Hawaii, February 23, 2006.

8

9 /s/ Debra Chun

10 DEBRA KEKUNA CHUN

11 RPR, CRR

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